REMARKS

Applicants wish to thank the Examiner for reviewing the present application.

I. Rejection Under 35 USC §102(b)

The Examiner has maintained the rejection of claims 1, 2, 4, 7, 9 and 23 under 35 USC §102(b) as being anticipated by Anson, U.S. Patent No. 5,584,229 (hereinafter '229). In the rejection, the Examiner maintains, in summary, that the '229 reference discloses a process wherein a beverage extract is created within a beverage brewing machine and heated to a temperature using a heated water solvent of 200°F. The Examiner further mentions that the heating means is the heated solvent as it makes its way into the brewing chamber and that the amount of second heated solvent employed would fall within the range of the instant claims. The Examiner continues by mentioning that step b in claim 1 calls for simply mixing the heated beverage extract with heated solvent and water from the first reservoir in the '229 reference will heat extract. Thus, the Examiner maintains the rejection.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a superior method for making a beverage. The method for making the beverage, as now claimed, comprises the steps of:

(a) heating a beverage extract within a beverage brewing machine to a temperature from about 75°C to about 90°C by contacting the beverage extract with a heating means placed within the beverage extract to produce a heated beverage extract; and

(b) mixing the heated beverage extract with a heated solvent to produce a beverage on demand

wherein the heating means is heated with electrical current, or the heated solvent, or both.

The invention of claim 1 is further defined by the dependent claims, which claim, among other things, that the extract is a tea extract, that the heated solvent is water, that the beverage comprises less than about 45% by weight heated solvent, that the beverage comprises at least about 0.1% by weight extract, and that the beverage brewing machine is a machine for dispensing tea.

The heating means is defined in the specification (please see, among other places, page 7). The heating means within the beverage extract is not water and this cannot be ignored by the Examiner.

In contrast, the '229 reference merely describes a beverage brewing appliance for producing a brewed beverage at a desired serving temperature. More particularly, the beverage brewing apparatus of the '229 reference has a first water source for delivering water at a brewing temperature. The apparatus also comprises a second water source wherein the second water source is at a temperature that reduces the temperature of the brewed beverage. Thus, the '229 reference merely discloses an apparatus for brewing a beverage that discharges water at two different temperatures so that the resulting beverage can be delivered at a desired serving temperature. No heating means, as defined in the specification, is in contact with extract.

The '229 reference, again, does not teach, suggest or disclose any of the limitations of the presently claimed invention. This is true because the claimed invention is concerned with extract that is heated with the heating means which is placed within the extract to produce a heated beverage extract. The same is subsequently combined with a heated solvent to produce a beverage on demand. The '229 reference shows a beverage brewing substance 98 (not extract) that is subjected to heated water 44. Turning to Figures 3 and 4 of the presently claimed invention, for example, shown is a heating means 44 and 46, respectively, in contact with non-heated extract 26. The heating means can be heated with electrical current or heated

solvent or both. The heating means is employed to heat the beverage extract which is subsequently combined with heated solvent to produce a beverage on demand. Again, the '229 reference begins with beverage brewing substance and combines the same with water of two different temperatures. There is no heating means used in contact to heat a beverage extract to produce a heated beverage extract. In view of this, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not described in the '229 reference. Therefore, the novelty rejection should be withdrawn and rendered moot.

II. Rejection Under 35 USC §102(e)

The Examiner has rejected claims 1, 2, 9 and 23 under 35 USC §102(e) as being anticipated by Greenwald et al., U.S. Application Publication No. 2002/0130137 A1 (hereinafter '137). It is not clear if the 102(e) rejection has been withdrawn by the Examiner. In the rejection, the Examiner appears to maintain, in summary, that the '137 reference discloses a process wherein a beverage extract is heated within a brewing machine in a reservoir to a temperature which is less than or equal to the desired temperature for dispensing the beverage. The Examiner further appears to maintain that the beverage extract is heated by electrical current and it is expected that the extract of the cold reservoir would inherently provide much more than 0.1% of the prepared beverage with the mixing of contents of both the cold and hot reservoirs. Based on the summary above, the Examiner apparently continues to believe that the anticipatory rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a superior method of brewing a beverage wherein the method for making the beverage comprises the steps of:

(a) heating a beverage extract within a beverage brewing machine to a temperature from about 75°C to about 90°C by contacting the beverage extract with a heating means placed within the beverage extract to produce a heated beverage extract; and

(b) mixing the heated beverage extract with a heated solvent to produce a beverage on demand

wherein the heating means is heated with electrical current, or the heated solvent, or both.

The invention of claim 1 is further defined by the dependent claims, which claim, among other things, that the beverage extract is a tea extract, that the beverage comprises at least about 0.1% by weight extract and that the beverage brewing machine is a machine for dispensing tea.

Contrary to the Examiner's conclusions, Applicant wishes to point out that element 43 in the '137 reference is a heater in coffee reservoir (please see [0052]), not in a beverage extract as claimed in this invention. Note that 5 of figure 4 in the '137 reference is a coffee output pipe. Extract is not heated in the apparatus of the '137 reference as the Examiner suggests.

Again, the '137 reference is directed to a beverage dispenser having selectable temperature. The beverage dispenser of the '137 reference is said to be suitable to regulate temperature of dispensed product. More particularly, the beverage machine of the '137 reference is designed to dispense hot beverages at selected temperatures in a range between a higher temperature and a lower temperature. Noting whatsoever in the '137 reference even remotely suggest contacting a beverage extract with a heating means in contact with the beverage extract to heat the beverage extract wherein the heated beverage extract is combined or mixed with heated solvent to produce a beverage on demand. Clearly, the '137 reference describe beverages being brewed in conventional ways and then being stored in a holding tank at elevated temperature. In view of this, all of the important and critical limitations set forth in

the presently claimed invention are not found in the '137 reference and the anticipatory rejection should be withdrawn and rendered moot.

III. Rejection Under 35 USC §103

The Examiner has again rejected claims 1, 2, 4, 7, 9 and 23 under 35 USC §103 as being unpatentably over Anson, U.S. Patent No. 5,584,229 (hereinafter '229).

In the rejection, the Examiner maintains, in summary, that if the '229 reference does not disclose heating the beverage extract to a temperature within the range as called for, such a temperature would have been well within the pervue of the skilled artisan, and therefore, the invention set forth in the above-identified claims is obvious.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the invention is directed to a superior method for making a beverage wherein beverage extract within a beverage brewing machine is heated to a temperature from about 75°C to about 90°C by contacting the beverage extract with a heating means placed within the beverage extract to produce a heated beverage extract, and mixing the beverage extract that was heated with a heated solvent to produce a beverage on demand wherein the heating means is heated with electrical current, or the heated solvent, or both.

In contrast, and again, the '229 reference does not employ a heating means within the meaning defined by the present specification. Moreover, and again, the '229 reference merely describes a reduced temperature coffee brewer. The device described in the '229 reference only describes a brewing device that has a first water source at a temperature that is associated with brewing beverage and a second water source that is at a lower temperature and can be

used to reduce the temperature of the desired beverage that is brewed. Again, there is no heating means within contact of beverage extract within a beverage brewing machine as described in the presently claimed invention. Moreover, and for example, nothing in the '229 reference even remotely suggests how much heated solvent is used, and the amount of beverage extract employed. Applicant further submits that beverage extract is not simply ground coffee or tea leaf. In view of this, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Therefore, the obviousness rejection should be withdrawn and rendered moot.

IV. Rejection Under 35 USC §103

The Examiner has again rejected claims 1, 2, 9 and 23 under 35 USC §103 as being unpatentable over the Greenwald et al., U.S. Patent Publication No. 2002/0130137 A1 (hereinafter '137). In the rejection, the Examiner mentions, that if the '137 reference does not disclose a process wherein a beverage extract is heated within a beverage brewing machine and a reservoir to a temperature to which is less than or equal to the desired temperature for dispensing the beverage, it should be noted/understood that the '137 reference suggests several conventional dispensing temperatures and that the presently claimed invention is obvious in view of this. Thus, the Examiner believes the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a method for making a beverage comprising the steps of heating a beverage extract within a beverage brewing machine to a temperature from about 75°C to about 90°C by contacting the beverage extract with a heating

means placed within the beverage extract to produce the heated beverage extract. The same is then mixed with heated solvent to produce a beverage on demand. The invention of claim 1 is further defined by the dependent claims, which claim, among other things, that the extract is a tea extract, that the beverage comprises at least 0.1% by weight extract and that the beverage brewing machine is a machine for dispensing tea.

In contrast, and as already made of record, the '137 reference mentions heating coffee, not beverage extract. Moreover, and again, the '137 reference merely describes a beverage dispenser having selectable temperatures. As set forth on page 2, column 1 of the '137 reference, beverage is brewed conventionally and stored in a conventional holding tank at elevated temperatures. The holding tank communicates with two smaller reservoirs. A quantity of beverage is stored in a first reservoir at an elevated temperature and a second quantity of beverage is cooled and stored in a second reservoir at a lower temperature. When a cup of beverage is desired and dispensed, the temperature is selected and a quantity of beverage is dispensed from each of the reservoirs. Nothing in the '137 reference even remotely suggests heating a beverage extract with a heating means placed within the beverage extract. Moreover, it should be understood that beverage extract is a precursor to a beverage that is ready to drink and such a precursor is combined with solvent in order to produce a desired beverage. In view of this, it is requested that the obviousness rejection be withdrawn and rendered moot.

V. Rejection Under 35 USC §103

The Examiner has again rejected claim 22 under 35 USC §103 as being unpatentable over Greenwald et al., U.S. Patent Publication No. 2002/0130137 A1 (hereinafter '137). In the rejection, the Examiner maintains, in summary, that the claim calls for a heating means comprising a metal rod and the Examiner believes that this is notoriously well known as taught, for example, in Figure 3 at element 31 of the '137 reference. In view of this, the Examiner

believes that the claim is obvious and that the rod described in the '137 reference is a conventional alternative to employing electrical currents for heating liquids from within.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a method for making a beverage comprising the step of heating a beverage extract within a beverage brewing machine to a temperature from about 75°C to about 90°C by contacting the beverage extract with a heating means placed within the beverage extract. Claim 22 further defines the invention by classifying the heating means as one which comprises a metal rod or pipe. In contrast, the '137 reference at 31 of Figure 3 merely discloses a wire 30 wound in a helix type winding around the inner tube 31. The inner tube 31 is used as a filler and coffee flows in between two tubes. Tube 31 in combination with tube 38 function to force coffee to flow in a thin layer. Nothing in the '137 reference even remotely suggests that a beverage precursor (namely an extract) is heated by contacting the same with a heating means that is placed within the beverage extract such that the heating means can comprise metal or pipe. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the '137 reference. Therefore, the obviousness rejection should be withdrawn and rendered moot.

VI. Rejection Under 35 USC §103

The Examiner has again rejected claims 1, 4-9 and 22 under 35 USC §103 as being unpatentable over Cornelius, U.S. Patent No. 3,532,505 (hereinafter '505) taken with Greenwald et al., U.S. Patent Application Publication No. 2002/0130137 A1 (hereinafter '137), or Kappenberg, U.S. Patent No. 2,204,896 (hereinafter '896) and Greenwald et al., U.S. Patent Publication No. 2002/0130137 A1 (hereinafter '137). In the rejection, the Examiner maintains, that the rejection stands for the reasons set forth in the last Office Action and that the claims

now call for the beverage to be contacted with a heating means placed within the beverage extract wherein the heating means is heated with electrical current or heated solvent or both. The Examiner then reiterates that the '505 reference does set forth a chamber which is heated and that it is known to heat beverages with rods as taught, for example, in the '137 reference. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the '137 reference does not, even remotely, describe a heating means as defined in this invention. The '505 reference does not, even remotely, address a heating means as defined and claimed in this invention, and the '896 reference is merely directed to coffee processing. Again, the present invention is directed to a method for making a beverage comprising the steps of heating a beverage extract within a beverage brewing machine to a temperature from about 75°C to about 90°C by contacting the beverage extract with a heating means placed within the beverage extract to produce a heated beverage extract whereby the heated beverage extract is contacted with a heated solvent to produce a beverage on demand. The invention of claim 1 is further defined by the dependent claims which claim, among other things, that the heated solvent is water, that 45% of the solvent employed is heated, that the beverage is translucent, that the beverage is made with 0.1% by weight extract and that the heating means is a metal rod or pipe.

In contract, and as already made of record, the '505 reference is merely directed to the supply of liquid coffee to consumers. Figure 1 of the '505 reference shows water added to a coffee extractor which is subsequently sent to a carbonator and then to a storage tank. Nothing in the '505 reference even remotely shows a beverage extract being heated with a heating means (as defined in this invention) and particularly a heating means that is either heated with an electrical current or a heated solvent and placed in contact with the beverage extract. Again,

the '137 reference only describes a beverage dispenser having a selectable temperature wherein the dispenser comprises a beverage that is made in a conventional manner and divided into separate reservoirs at different temperatures. The '896 reference does not cure any of the deficiencies of the references relied on by the Examiner since the same is merely directed to the addition of glycerin to a coffee extract wherein the same is heated to improve flavor characteristics and increase the resistance of rancidity of the extract (all of which does not occur in a beverage brewing machine as required in the presently claimed invention). In view of this, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Therefore, Applicant, again, requests that the obviousness rejection be withdrawn and rendered moot.

VII. Rejection Under 35 USC §103

The Examiner has, again, rejected claim 8 under 35 USC §103 as being unpatentable over any one of Anson (the '229 reference), Greenwald et al., (the '137 reference), Cornelius (the '505 reference) taken alone or the '505 reference with Kappenberg (the '896 reference) wherein the same is further taken together with either one of JP 4-45745 (hereinafter '745) or Weissberg et al., U.S. Patent No. 2,338,608 (hereinafter '608).

In the rejection, the Examiner mentions, that the '505 reference does not provide a process wherein the product is translucent and does not comprise visible particles of extract. However, the Examiner relies on the '745 reference to show clear coffee extract can be produced by adding an enzyme after heating a combination of the same. The Examiner also relies on the '608 reference for apparently demonstrating that coffee can be sediment free. In view of this, the Examiner believes that the obvious rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, this invention is directed to a superior method for making a beverage wherein beverage extract is heated with a heating means that is in contact with the beverage extract. Claim 8 further defines independent claim 1 by characterizing the resulting beverage as one which is translucent and does not comprise particles of extract. For the reasons mentioned above, none of the references relied on by the Examiner even remotely teach such a process. The '745 reference (as shown in the abstract) is merely directed to a coffee extract having enzymes added thereto to prevent cloud development. The '608 reference is merely directed to a process for preparing coffee extract by leaching, in a continuous manner, separate portions of freshly roasted ground coffee. None of the references even remotely suggest heating an extract (a beverage precursor) with a heating means that is directly in contact with the extract as defined in this present application. In view of this, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, the obviousness rejection should be withdrawn and rendered moot.

VIII. Rejection Under 35 USC §103

The Examiner has, again, rejected claims 2 and 23 under 35 USC §103 as being unpatentable over Greenwald et al., (the '137 reference) and further in view of Anson et al., U.S. Patent No. 4,920,871 (hereinafter '871). In the rejection, the Examiner mentions, in summary, that the '137 reference does not disclose a process for treating tea extract. Nevertheless, the Examiner relies on the '137 reference for apparently mentioning that attempts in working with tea extracts have been made and that conventional dual use appliances used to prepare hot beverages are known. In view of this, the Examiner again maintains that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicant's position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

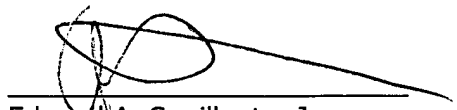
As already made of record, the present invention is directed to a superior method for making a beverage wherein the method comprises the step of heating a beverage extract with a heating means that is in direct contact with the beverage extract. The invention of claim 1 is further defined by the dependent claims, which claim, among other things, that the beverage extract can be tea extract and that the beverage brewing machine is a tea dispensing machine. In contrast, and as already made of record, the '137 reference only shows a beverage dispenser having selectable dispensers wherein beverage brewed in the conventional manner is housed in different reservoirs at different temperatures. Only coffee beverage is heated in the '137 reference. The '871 reference does not cure any of the vast deficiencies of the '137 reference since the '871 reference describes a beverage making appliance that has hot water which is displaced by an equal volume of a batch of cold water discharged by gravity. Nothing in the combination of references relied on by the Examiner even remotely suggests a process for making a beverage wherein beverage extract is heated by a heating means that is in contact the extract. In view of this, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, the obviousness rejection is improper and should be withdrawn and rendered moot.

Applicant submits that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

Applicant further submits that this application is ready for Appeal but welcomes assistance from the Examiner so that the extreme expense of a brief may be avoided.

In the event the Examiner has any questions concerning the present patent application, he is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,



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